

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BUZZFEED INC.,	:	
111 East 18th Street, 13th Floor	:	
New York, NY 10003	:	
	:	
Plaintiff,	:	
	:	
- - against - -	:	<u>COMPLAINT</u>
	:	
U.S. DEPARTMENT OF JUSTICE,	:	
950 Pennsylvania Ave., NW	:	
Washington, D.C. 20530	:	
	:	
Defendant.	:	
	:	
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1. Plaintiff BUZZFEED INC. brings this Freedom of Information Act suit to force Defendant U.S. DEPARTMENT OF JUSTICE (DOJ) to produce all non-exempt records regarding the Office of the Inspector General’s investigation of a Former DOJ Executive Officer (“the DOJ Official”) who was accused of sexual harassment and professional misconduct. The Office of the Inspector General’s investigation concluded that the DOJ Official did engage in sexual harassment, which included making inappropriate comments to a subordinate on three separate occasions and engaging in an unsolicited kiss on the lips. In violation of FOIA, DOJ refused to release the DOJ Official’s name, office, and the date of retirement.

PARTIES

2. Plaintiff BUZZFEED INC. (“BUZZFEED”) is a member of the media and made the FOIA request at issue in this case. BUZZFEED is a Delaware corporation with its principal place of business in New York, NY.

3. Defendant U.S. DEPARTMENT OF JUSTICE (“DOJ”) is a federal agency and subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

4. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

JULY 21, 2020 FOIA REQUEST

6. On July 21, 2020, BUZZFEED submitted a FOIA request to the Office of the Inspector General (“OIG”), a component of DOJ, for “[a]ccess to and/or copies of the full report by the Office of the Inspector General related to the Investigative Summary published on OIG’s website on July 21, 2020, entitled: ‘Findings of Misconduct by a Former DOJ Executive Officer for Making Inappropriate Comments Constituting Sexual Harassment to a Subordinate on Three Occasions.’ (URL: <https://oig.justice.gov/reports/investigative-summary-findings-misconduct-former-doj-executive-officer-making-inappropriate>).” BUZZFEED added that it is seeking a “copy of the full report that was provided by OIG to the relevant Justice Department components, including any exhibits, indices, or other attachments.” Exhibit A.

7. On July 22, 2020, DOJ acknowledged receipt of the request and assigned reference number 20-OIG-290 to the matter. Exhibit B.

8. On March 17, 2021, DOJ produced fifteen pages of records responsive to the request, but withheld and redacted the DOJ Official’s identifying information, such as the name, office, and the date of retirement by citing Exemptions 6 and 7C of FOIA. Exhibit C.

9. Throughout the produced report, DOJ identified the DOJ Official as an “Executive Officer.” *Id.*

10. On March 25, 2021, BUZZFEED appealed the withholdings of the name, office, date of retirement of the DOJ Official. Exhibit D.

11. On March 25, 2021, DOJ assigned reference number A-2021-01368 to the appeal. Exhibit E.

12. On June 30, 2021, DOJ affirmed the redactions of the name, office, and the date of retirement of the DOJ Official under Exemptions 6 and 7C of FOIA. Exhibit F.

13. Under Exemptions 6 and 7C, the agency must “balance the public interest in disclosure against the [privacy] interest Congress intended the [exemptions] to protect.” *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 776 (1989).

2. The public interest in the DOJ Official’s identifying information is significant because the DOJ Official was a former DOJ “Executive Officer,” a high-ranking official with significant managerial roles and oversight responsibilities.

3. Further, the four separate incidents of wrongdoing, which constituted making inappropriate comments to a subordinate and engaging in an unsolicited kissing on the lips with a subordinate, according to the OIG’s Investigative Report, violated the Attorney General Policy Memorandum #2015-04 – Prevention of Harassment in the Workplace, dated October 9, 2015.

4. The information sought by BUZZFEED would shed light on the misconduct of an executive-level government employee and how that misconduct affected the operation of the Office, and the information sought to be disclosed relate to the employee’s performance of the DOJ Official’s public duties as the wrongdoings had collateral and direct effects on the DOJ employees and work environment.

5. Therefore, identifying information of the DOJ Official—the name, office, and the date of retirement—are not exempt under Exemptions 6 and 7C of FOIA and must be disclosed.

6. As of the date of this filing, DOJ has not complied with FOIA and has not produced all records responsive to the request.

COUNT I – VIOLATION OF FREEDOM OF INFORMATION ACT

7. The above paragraphs are incorporated herein.
8. The request seeks the disclosure of agency records and were properly made.
9. DOJ is a federal agency subject to FOIA.
10. DOJ failed to produce all records responsive to the request.

WHEREFORE, BUZZFEED asks the Court to:

- i. declare that Defendants have violated FOIA;
- ii. order Defendants to produce all records responsive to the request;
- iii. enjoin Defendants from withholding non-exempt public records under FOIA;
- iv. award Plaintiff attorneys' fees and costs; and
- v. award such other relief the Court considers appropriate.

Dated: September 9, 2021

Respectfully Submitted,

BUZZFEED, INC.

By: /s/ Anand Swaminathan

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